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Before the

TENNESSEE REGULATORY AUTHORITY

IN RE:

**BELLSOUTH TELECOMMUNICATIONS, INC., CITIZENS
COMMUNICATIONS, INC., UNITED TELEPHONE-SOUTHEAST, INC.
PETITION FOR EXEMPTION OF CERTAIN SERVICES**

DOCKET NO. 03-00391

**DIRECT TESTIMONY
OF
TERRY BUCKNER**

October 4, 2004

1 **Q. Please state your name for the record.**

2 A. My name is Terry Buckner.

3

4 **Q. By whom are you employed and what is your position?**

5 A. I am employed by the Consumer Advocate and Protection
6 Division ("CAPD") in the Office of the Attorney General for the state
7 of Tennessee ("Office") as a Regulatory Analyst.

8

9 **Q. How long have you been employed in conjunction with the utility**
10 **industry?**

11 A. Approximately twenty-five years. Before my current
12 employment with the Office, I was employed by the Comptroller's
13 Office for the State of Tennessee for nearly two years as the Assistant
14 Director responsible for public utility audits after approximately eight
15 years of prior employment with the Office. Formerly, I was employed
16 with the Tennessee Public Service Commission ("Commission") in
17 the Utility Rates Division as a financial analyst for approximately six
18 years. My responsibilities included testifying before the Commission
19 as to the appropriate cost of service for public utilities operating in
20 Tennessee. Prior to my employment with the Commission, I was
21 employed by TDS Telecom for eight years and the First Utility
22 District of Knox County for three years.

1 **Q. What is your educational background and what degrees do you**
2 **hold?**

3 A. I have a Bachelors degree in Business Administration from the
4 University of Tennessee, Knoxville with a major in Accounting. I am
5 also a Tennessee Certified Public Accountant and a member of the
6 American Institute of Certified Public Accountants. Additional
7 education background with respect to my qualifications is provided in
8 Attachment A.

9
10 **Q. Would you briefly describe your responsibilities as a Regulatory**
11 **Analyst with the CAPD?**

12 A. I prepare testimony and financial exhibits in rate proceedings
13 as an employee with the CAPD. Additionally, I review tariff filings
14 by the Tennessee Regulatory Authority ("TRA") certificated utilities
15 operating in Tennessee.

16
17 **Q. What is the purpose of your testimony?**

18 A. The purpose of my testimony is to present information to the
19 TRA on whether it is appropriate to exempt from regulation PRI
20 ISDN service for three incumbent local exchange carriers ("ILECs"):
21 BellSouth Telecommunications, Inc. ("BellSouth"), United
22 Telephone-Southeast, Inc., ("UTSE") and Citizens

1 Telecommunications Company of Tennessee (“Citizens”).

2

3 **Q. What is PRI ISDN service?**

4 A. PRI ISDN is the acronym for Primary Rate Interface Integrated
5 Services Digital Network. PRI is a 1.544 Mbps interface which
6 provides for 23 message bearing 64 Kbps B channels for voice and
7 data, plus a 64 Kbps D channel for network signaling. The service
8 provides end-to-end digital connectivity between ISDN compatible
9 customer premise equipment and a serving central office.

10

11 **Q. What are the essential PRI ISDN service components?**

12 A. PRI ISDN service has three essential components: an access
13 line, an interface, and B channels. In a normal PRI ISDN service
14 arrangement, there are 23 B channels for each access line and each
15 interface. Therefore, a total quantity of 25 monthly recurring billing
16 elements may be prescribed in the provision of PRI ISDN service.

17

18 **Q. What is the price of PRI ISDN service?**

19 A. In my Exhibit, Schedule 1 provides a summary of tariff prices
20 by competitive local exchange carrier (“CLECs”) in competition with
21 the ILEC, BellSouth. Some of the CLECs price PRI ISDN by service
22 component, while others offer a total price, which is shown in

1 Column (1). Although there are a number of competitors, the quality
2 and the availability of the CLECs' PRI ISDN services is not known.
3 Obviously, some of the CLECs may be constrained to a single city in
4 Tennessee and not throughout the BellSouth service territory.

5 Schedule 2 provides a summary of tariff prices by CLEC in
6 competition with the ILEC, UTSE. Schedule 3 provides a summary
7 of tariff prices by CLEC in competition with the ILEC, Citizens.
8 Based on the understanding of the tariffs, each schedule provides a
9 price comparison for PRI ISDN service for one year. For
10 comparative purposes, the PRI ISDN service arrangement assumes
11 one access lines, one interface and 23 B channels.

12 Tariff prices for PRI ISDN service, however, are not the only
13 rates offered to consumers. PRI ISDN service is also offered with
14 discount rates through Contract Service Arrangements ("CSAs") and
15 through special promotional offerings. Schedule 4
16 **(PROPRIETARY)** documents the prices and related costs for nearly
17 six-hundred known BellSouth CSAs providing PRI ISDN in
18 Tennessee for the first year of service. Again, for comparative
19 purposes, the PRI ISDN CSAs assume one access line, one interface
20 and 23 B channels.

21 In summary, Schedule 5 graphs the trend in BellSouth's CSA
22 PRI ISDN service prices listed in Schedule 4 for Tennessee. The

graph demonstrates the range of the price discounts offered by BellSouth, as low a discount as 5.1% to a discount as high as 73.99%. The graph proves that BellSouth can discount their price as much as they want, to whomever they want, for as long as they want, and remain profitable. Their only constraint is that BellSouth cannot go above their tariff price, because existing regulatory rules limit price increases. Also, the graph is indicative of the volume of CSAs initiated by BellSouth for PRI ISDN and clearly presents the price flexibility enjoyed by BellSouth under the CSA pricing regime. BellSouth's pricing behavior demonstrates their efficacy in muting existing or potential competition for PRI ISDN service. Without regulatory restraint, such anti-competitive behavior could lead to price-squeezing and predatory pricing in the future. For example, as shown in Schedule 6 (PROPRIETARY), two existing BellSouth PRI ISDN CSA's revenue contributions are less than their respective costs over the term of the contracts (Tariff #2003851 and #040227). This long-term pricing strategy for PRI ISDN service could succeed only for a dominant carrier.

Q. How many PRI ISDN access lines are in service in Tennessee?

A. The CAPD is unable to ascertain through discovery and investigation the total number of PRI ISDN access lines in service in

1 Tennessee. As a result, it is impossible to determine the market share
2 of PRI ISDN access lines by a single telecommunications provider.
3 In fact, no ILEC has made a determination of their market share of
4 PRI ISDN service or their CLECs' market share of PRI ISDN service.
5 Absent this critical market share information, **no action** by the TRA
6 to exempt PRI ISDN for the ILECs from regulation would be the just
7 and reasonable measure.

8 Schedule 7, however, shows the known number of PRI ISDN
9 access lines in service in Tennessee by BellSouth. While there are
10 many competitors for PRI ISDN service in Tennessee, BellSouth
11 remains the dominant facilities-based provider.

12
13 **Q. Please explain how BellSouth is the dominant provider of PRI**
14 **ISDN in Tennessee.**

15 A. Most of the CLECs provision their PRI ISDN services through
16 BellSouth facilities. BellSouth has over \$6 billion in gross plant in
17 service in Tennessee as of December 31, 2003.¹ Unlike the long
18 distance market, where there are several competing facilities based
19 carriers, the CLECs have minuscule facilities relative to BellSouth.
20 Thus, the CLECs, in large part, must make a revenue contribution to
21 BellSouth for the use of their facilities before they can offer PRI

¹Source: BellSouth 2003 FCC ARMIS Report 43-02, Table B-6.

1 ISDN. Consequently, BellSouth's wholesale price of services
2 directly affects the retail prices that CLECs charge their customers.
3 This type of competition is not likely to result in sustained head to
4 head competition, which is necessary to effectively regulate the price
5 of PRI ISDN service. Schedule 8 shows the growth in total access
6 lines in Tennessee, both switched access and special access, from
7 1999 to 2003. The CLECs have contributed to this growth through
8 their purchase of special access to offer services for their customers.

9 Therefore, the CLECs remain dependent upon BellSouth's
10 dominance in facilities to provision PRI ISDN to their customers.
11 BellSouth is not only a dominant wholesale facilities provider, but
12 also as shown previously through voluminous CSAs, is the dominant
13 retail facilities provider in Tennessee. Consequently, effective price
14 competition is not likely to occur as the CLEC's costs of PRI ISDN
15 are largely driven by BellSouth's wholesale prices.

16

17 **Q. Please comment on the petitions of UTSE and Citizens to exempt**
18 **their PRI ISDN services from regulation.**

19 A. Based on the responses of the two ILECs as shown in
20 Schedules 2 and 3, there is significantly less competition for this
21 service. The preponderance of evidence in support of their petitions
22 is even more elusive. For example, Citizens cites only five CSAs in

1 Tennessee for PRI ISDN service and UTSE's tariff indicate only five
2 CSAs as well. Yet, UTSE "maintains that off-tariff CSAs are usually
3 the result of competition."²

4 Apparently, the two ILECs want to do a "Me Too" with
5 BellSouth's petition even though their market conditions are
6 significantly different. Curiously, despite having traditional service
7 territories adjacent to one another, none of the ILECs who have filed
8 petitions for exemption recognize each other as competitors for PRI
9 ISDN service. One must assume that the ILECs are content to
10 maintain their dominance in their traditional service areas and not
11 compete against each other.

12 Therefore, based on the lack of evidence, it would not be just
13 and reasonable for the petitions of UTSE and of Citizens to be
14 granted.

15
16 **Q. Please summarize your testimony.**

17 A. The petitions of BellSouth, UTSE, and Citizens exempting PRI
18 ISDN service from regulation should be denied by the TRA.
19 BellSouth is the dominant facilities based retail and wholesale ILEC
20 in Tennessee and that dominance has not been diminished in the
21 provision of PRI ISDN. This dominance is exemplified particularly

²UTSE Response to CAPD 1st set of Discovery, Item 10.

1 for BellSouth through their pricing flexibility and their exhibited
2 volume of CSA activity. Yes, a small measure of competition does
3 presently exist for this service and the CAPD welcomes the
4 development of a more robust competitive marketplace. However,
5 exemption of this service for BellSouth at this time would undermine
6 existing competition and the development of future competition. As a
7 result, **exemption would not be in the public interest.** Presently, in
8 large part, the CLECs have limited financial and human resources.
9 Many business customers can choose a telecommunications service
10 provider or change from one provider to another. The ability to
11 choose a service provider is predicated on the financial welfare of the
12 service providers in the marketplace. Unlike the profitable ILECs,
13 most of the CLECs operating in Tennessee in 2003 were **not**
14 profitable. If this lack of profitability continues, then prospective
15 competition will be negligible. Therefore, an **effective regulator of**
16 **price for these services will not exist.**

17
18 **Q. Does this conclude your testimony?**

19 **A. Yes, it does.**

Attachment A

Terry Buckner

Regulatory Analyst

Office of the Attorney General for the State of Tennessee

Consumer Advocate & Protection Division

Additional Education Background:

Cost Separations School, **United States Telephone Association, San Diego**

Rate Case School, **Arthur Andersen LLP, Chicago**

Telecommunications Conference, **University of Georgia, Athens**

Micro-Computer Training, **University of Wisconsin, Madison**

NARUC Conference, **Michigan State University, Lansing**

Management Training Seminar, **Vanderbilt University**

Interstate Access Settlements, **National Exchange Carrier Association**

SEARUC Conferences, **Birmingham, AL and Charleston, S.C.**

Telephone Plant Accounting Program, **Ernst and Young LLP, Atlanta**

NARUC Subcommittee on Accounting & Finance, **San Antonio**

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:

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INC., UNITED TELEPHONE-SOUTHEAST, INC. PETITION FOR EXEMPTION OF
CERTAIN SERVICES**

DOCKET NO. 03-00391

AFFIDAVIT

I, Terry Buckner, Regulatory Analyst, for the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate and Protection Division.



TERRY BUCKNER

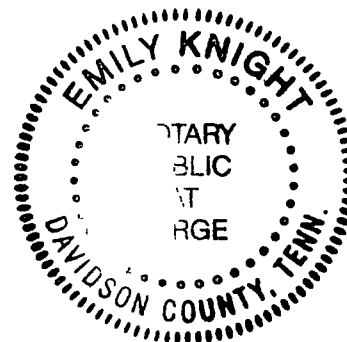
Sworn to and subscribed before me
this 4th day of October, 2004.



NOTARY PUBLIC

My commission expires: September 22, 2007

79058



My Commission Expires SEPT. 22, 2007

Before the

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COMMUNICATIONS, INC., UNITED TELEPHONE-SOUTHEAST, INC.
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DOCKET NO. 03-00391

**NON-PROPRIETARY EXHIBITS
OF
TERRY BUCKNER**

October 4, 2004

Company	(1)		(2)		(3)	(4)		Total Annual Revenue Requirement
	Primary Rate Access Line	Primary Rate Interface	Primary Rate Channel	Non-Recurring Charge				
AT&T	A/ \$	12,780		X/ \$		1,500	14,280	
MCI	B/	18,000		Y/		200	18,200	
XO	C/	9,000		Z/		750	9,750	
Time Warner	D/	8,400	D/ \$	AA/	9,600	500	18,500	
	E/	8,400	R/	AB/	11,040	1,000	20,440	
EPB	F/	3,060		AC/		375	3,435	
ITC Delta	G/	720	N/ \$	AD/	9,660	1,660	14,440	
Aeneas	H/	2,400	O/	AE/	13,800	895	17,095	
New South	I/	2,880	P/	AF/	13,800	1,200	20,760	
NuVox	J/	10,800		AG/		1,250	12,050	
Intermedia	K/	10,980		AH/	-	500	11,480	
BellSouth	L/	1,620	Q/	AI/	15,042	1,100	22,382	
ICG	M/	6,300		AJ/		600	6,900	
Birch	AK/	4,200	AN/	AM/	11,040	600	15,840	
SBC Telecom				AN/		700	7,300	
Sources	A/	AT&T Local Exchange Tariff, Section 7 9 A, Original Page 12, February 28, 2003		U/	New South Tariff, Section 6 4, Original Page 84, November 9, 2001			
B/	MCImetro Tariff, Section 21 5 3 2, Original Page 21 18, June 11, 2004		V/	Intermedia Tariff, Section 4 8, Second Revised Page 40 24, February 16, 2001				
C/	XO Tennessee Tariff, Section 3 1 6 2 2, Second Revised Page 57, October 22, 2001		W/	BellSouth Tariff, Section 42 3, Fifth Revised Page 30, December 23, 2002				
D/	Time Warner Tariff, Section 4 4 3 B, Original Pages 66-67, May 22, 2003		X/	AT&T Local Exchange Tariff, Section 7 9 B, First Revised Page 13, July 28, 2003				
E/	US LEC Tariff, Section 5 5, First Revised Page 53 1, February 25, 2002		Y/	MCImetro Tariff, Section 21 5 3 1, Original Page 21 17, June 11, 2004				
F/	EPB Tariff, Section 10 7, Original Page 19, October 29, 2000		Z/	XO Tennessee Tariff, Section 3 1 6 2 1, Second Revised Page 57, October 22, 2001				
G/	ITC'DeltaCom Tariff, Section 4 1 7 A, Fifth Revised Page 106, August 15, 2004		AA/	Aeneas Tariff, Section 4 3 7 3, Fourth Revised Page 32, April 1, 2003				
H/	New South Tariff, Section 6 4, Original Page 84, November 9, 2001		AB/	US LEC Tariff, Section 5 5, First Revised Page 53 1, February 25, 2002				
I/	NuVox Tariff, Section 4 18, Second Revised Page 4 46, August 8, 2002		AC/	EPB Tariff, Section 10 7, Original Page 19, October 29, 2000				
J/	Intermedia Tariff, Section 4 8, Second Revised Page 40 24, February 16, 2001		AD/	ITC'DeltaCom Tariff, Section 4 1 7 B, Third Revised Page 106 1, August 15, 2004				
K/	BellSouth Tariff, Section 42 3, Fifth Revised Page 30, December 23, 2002		AE/	Aeneas Tariff, Section 4 3 7 3, Fourth Revised Page 32, April 1, 2003				
L/	ITC'DeltaCom Tariff, Section 4 1 7, Fifth Revised Page 106, August 15, 2004		AF/	New South Tariff, Section 6 2 3, First Revised Page 83, January 30, 2002				
M/	ICG Telecom Tariff, Section 10 1, Original Page 122 1, December 22, 2003		AG/	NuVox Tariff, Section 4 18, Second Revised Page 4 46, August 8, 2002				
N/	Aeneas Tariff, Section 4 3 7 3, Fourth Revised Page 32, April 1, 2003		AH/	Intermedia Tariff, Section 4 8, Second Revised Page 40 24, February 16, 2001				
O/	New South Tariff, Section 6 4, Original Page 84, November 9, 2001		AI/	BellSouth Tariff, Section 42 3, Fifth Revised Page 30, December 23, 2002				
P/	BellSouth Tariff, Section 42 3, Fifth Revised Page 30, December 23, 2002		AJ/	ICG Telecom Tariff, Section 10 1, Original Page 122 1, December 22, 2003				
Q/	US LEC Tariff, Section 5 5, First Revised Page 53 1, February 25, 2002		AK/	Birch Tariff, Section 4 6 1 G 1, Original Revised Sheet 53 7, March 3, 2003				
R/	ITC'DeltaCom Tariff, Section 4 1 7 A, Fifth Revised Page 106, August 15, 2004		AL/	Birch Tariff, Section 4 6 1 G 2, Original Revised Sheet 53 7, March 3, 2003				
S/	Aeneas Tariff, Section 4 3 7 3, Fourth Revised Page 32, April 1, 2003		AM/	Birch Tariff, Section 4 6 1 G 1, Original Revised Sheet 53 7, March 3, 2003				
T/			AN/	SBC Telecom Tariff, Section 7 2 5, Second Revised Page 90, October 1, 2004				
	23 B Channels for one year							

TRA Docket #03-00391
PRI ISDN Tariff Comparisons
Competitors of UTSE

Schedule 2

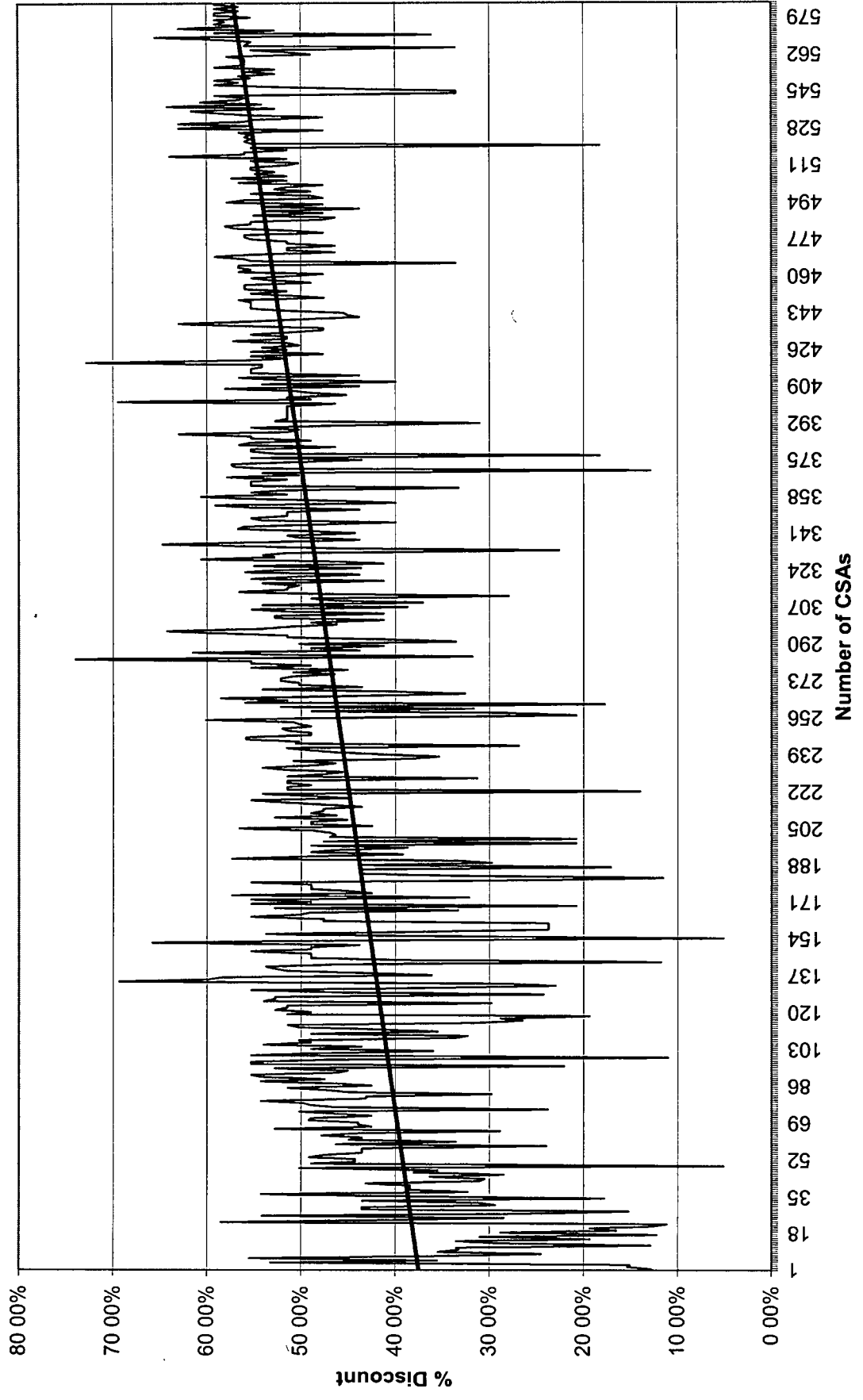
Company	Annual Recurring Charges			Non-Recurring Charge		Total Annual Revenue Requirement
	Primary Rate Access Line	Primary Rate Interface	Primary Rate Channel	Installation Charge		
KMC	9,000 A/			\$ 750		\$ 9,750
EAST TN	1,500 D/	4,200 E/	1,860	1,300		8,860
CITYNET	2,592 H/	5,520 I/	3,312	1,500		12,924
UTSE	2,316 L/	960 M/	4,968	335		8,579
Sources						
A/	KMC Tariff, Section 5 7, Original Page 10, March 29, 2000					
B/	KMC Tariff, Section 5 7, Original Page 10, March 29, 2000					
C/	East Tennessee Tariff, Section 10 7 1, Original Page 70, April 24, 2003					
D/	East Tennessee Tariff, Section 10 7 1, Original Page 70, April 24, 2003					
E/	East Tennessee Tariff, Section 10 7 1, Original Page 70, April 24, 2003					
F/	East Tennessee Tariff, Section 10 7 1, Original Page 70, April 24, 2003					
G/	CITYNET Tariff, Section 5 2 5 B, Original Page 104, February 27, 2004					
H/	CITYNET Tariff, Section 5 2 5 B, Original Page 104, February 27, 2004					
I/	CITYNET Tariff, Section 5 2 5 B, Original Page 104, February 27, 2004					
J/	CITYNET Tariff, Section 5 2 5 B, Original Page 104, February 27, 2004					
K/	UTSE Tariff, Section U12 3 7 A 1, Eighth Revised Page 33, August 29, 2003					
L/	UTSE Tariff, Section U12 3 7 C 1, Third Revised Page 33 1, August 29, 2003					
M/	UTSE Tariff, Section U12 3 7 C 1, Third Revised Page 33 1, August 29, 2003					
N/	UTSE Tariff, Section U12 3 7, Eighth and Third Revised Pages 33, 33 1 August 29, 2003					

TRA Docket #03-00391
PRI ISDN Tariff Comparisons
Competitors of Citizens

Schedule 3

Company	Recurring Charges		Non-Recurring Charge		Total Annual Revenue Requirement
	Primary Rate Access Line	Primary Rate Interface	Primary Rate Channel	Installation Charge	
Citizens	A/ 1,272	B/ 4,320	C/ 1,932	D/ 606	8,130
Ben Lomand	E/ 9,600			E/ 1,000	10,600
US LEC	F/ 8,400		G/ 11,040	H/ 1,000	20,440
Sources					
A/	Citizens Tariff, Section 20 2 6, Original Page 27, August 31, 1995				
B/	Citizens Tariff, Section 20 2 6, First Revised Page 28, May 10, 2002				
C/	Citizens Tariff, Section 20 2 6, First Revised Page 28, May 10, 2002				
D/	Citizens Tariff, Section 20 2 6, Original Page 27 & First Revised Page 28, May 10, 2002				
	Ben Lomand Tariff, Sections 3 1 3 2 & 3 1 5 3 3, Original Page 54, June 24, 2002				
	US LEC Tariff, Section 5 5, First Revised Page 53 1, February 25, 2002				
	US LEC Tariff, Section 5 5, First Revised Page 53 1, February 25, 2002				
	US LEC Tariff, Section 5 5, First Revised Page 53 1, February 25, 2002				

BellSouth PRI ISDN CSAs



Schedule 7

TRA Docket #03-00391

BellSouth PRI ISDN Control Channels

<u>State</u>	(1) <u>1999</u>	(2) <u>2001</u>	(3) <u>2003</u>	(4) <u>Growth</u>	(5) <u>% Growth</u>
Alabama	3,167	5,264	4,924	1,757	55.48%
Florida	9,312	14,561	14,668	5,356	57.52%
Georgia	6,539	11,272	11,238	4,699	71.86%
Kentucky	1,263	2,831	3,122	1,859	147.19%
Louisiana	3,426	5,288	5,014	1,588	46.35%
Mississippi	1,477	3,197	3,231	1,754	118.75%
North Carolina	4,220	6,089	5,382	1,162	27.54%
South Carolina	2,329	3,792	3,746	1,417	60.84%
Tennessee	4,379	7,118	6,341	1,962	44.80%
Total	36,112	59,412	57,666	21,554	59.69%

Source: FCC Report 43-08 ARMIS Operating Data Report

Column (4) is the difference between Column (3) and Column (1) amounts

Column (5) is the percent of Column (4) to Column (1)

TRA Docket #03-00391 **Schedule 8**

BellSouth Total Access Lines

<u>State</u>	(1) <u>1999</u>	(2) <u>2001</u>	(3) <u>2003</u>	(4) <u>Growth</u>	(5) <u>% Growth</u>
Alabama	2,310,193	2,722,256	2,991,693	681,500	29 50%
Florida	8,364,294	10,589,115	10,774,881	2,410,587	28 82%
Georgia	6,301,724	8,083,975	8,629,727	2,328,003	36 94%
Kentucky	1,489,304	1,769,249	1,784,095	294,791	19 79%
Louisiana	2,785,700	3,495,484	4,001,693	1,215,993	43 65%
Mississippi	1,516,026	1,727,628	1,767,983	251,957	16 62%
North Carolina	3,439,474	4,377,378	4,649,545	1,210,071	35 18%
South Carolina	1,791,495	2,275,031	2,349,786	558,291	31 16%
Tennessee	3,445,295	4,190,879	4,299,537	854,242	24 79%
Total	31,443,505	39,230,995	41,248,940	9,805,435	31 18%

Source. FCC Report 43-08 ARMIS Operating Data Report.

Column (4) is the difference between Column (3) and Column (1) amounts

Column (5) is the percent of Column (4) to Column (1).